

Form and Correctness Approved:

BAP

Contents Approved:

By: 

Office of the City Attorney

By: 

DEPT. City Attorney's Office

NORFOLK, VIRGINIA

Resolution No. 1849

A RESOLUTION CONCERNING ENTRY OF A REGIONAL
PARTICIPATION AGREEMENT AND RELATED MATTERS.

- - -

WHEREAS, the City of Norfolk ("City") is a member jurisdiction of the Southside Network Authority (the "Authority"), together with the Cities of Chesapeake, Portsmouth, Suffolk, and Virginia Beach (collectively, the "Member Localities"); and

WHEREAS, the Board of Directors of the Authority (the "Board") has requested that the City enter a Project Participation Agreement (the "Project Participation Agreement") in order to finance and manage the construction of a 119-mile regional fiber connectivity ring (the "Project"); and

WHEREAS, the City desires to proceed with the Project and enter the Project Participation Agreement, attached hereto as "Exhibit A," under substantially the terms set forth in the attached, concurrently with the other Member Localities and the Authority; now, therefore,

BE IT RESOLVED by the Council of the City of Norfolk:

Section 1:- That the Council hereby approves the adoption of the Southside Network Authority Project Participation Agreement, with such final corrections and amendments as may be necessary and proper, such necessity and propriety being conclusively evidenced by signature of the Project Participation Agreement. Further, the final version of the Project Participation Agreement shall be approved as to form and correctness by the City Attorney.

Section 2:- That the City's appointed Director, or Alternate in the event of her absence or inability to participate, may purchase shares in the Project, as provided in the Project Participation Agreement and subject to appropriation of funds by the Council.

Section 3:- That this Resolution shall be in effect from and after the date of its adoption.

ATTACHMENT:

Exhibit A (32 pages)

Adopted by Council January 11, 2022
Effective January 11, 2022

TRUE COPY

TESTE:

RICHARD ALLAN BULL

BY:

CHIEF DEPUTY CITY CLERK

EXHIBIT A

*Southside Regional Connectivity Ring
Project Participation Agreement*

PROJECT PARTICIPATION AGREEMENT**Southside Regional Fiber Connectivity Ring**

This project participation agreement (“Agreement”) is entered as of the 14th day of January, 2022, by and between the **Southside Network Authority**, a body politic and corporate and a political subdivision of the Commonwealth, whose address is 723 Woodlake Drive, Chesapeake, Virginia 23320 (the “Authority”), the **City of Chesapeake, Virginia**, a municipal corporation of the Commonwealth, whose address is 306 Cedar Road, Chesapeake, Virginia 23322, the **City of Norfolk, Virginia**, a municipal corporation of the Commonwealth, whose address is 810 Union Street, Norfolk, Virginia 23510, the **City of Portsmouth, Virginia**, a municipal corporation of the Commonwealth, whose address is 801 Crawford Street, Portsmouth, Virginia 23704, the **City of Suffolk, Virginia**, a municipal corporation of the Commonwealth, whose address is 442 West Washington Street, Suffolk, Virginia 23434, and the **City of Virginia Beach, Virginia**, a municipal corporation of the Commonwealth, whose address is 2401 Courthouse Drive, Virginia Beach, Virginia 23456.

Recitals:

WHEREAS, the Authority was formed by the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach (the “Member Jurisdictions”) under the provisions of the Virginia Wireless Service Authorities Act, *Code of Virginia*, Chapter 54.1 of Title 15.2 (the “Act”) for the purpose of providing or facilitating the provision of qualifying communications services, as provided in the Act and the Articles of Incorporation of the Authority; and

WHEREAS, the initial project is as described in **Appendix A** and as let in SNA-IFB-2021-01, as constructed in accordance with such contract, as amended, and financing, operations, maintenance, marketing, reconstruction, renovation, extensions, and management thereof; and

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WHEREAS, the Authority and its Member Jurisdictions wish to set forth their mutual agreements as to the manner of carrying out such activities.

ARTICLE I
Definitions

“Act” means the Virginia Wireless Service Authorities Act, *Code of Virginia*, Chapter 54.1 of Title 15.2.

“Annual Budget” has the meaning given to it in Section 3.2.

“Applicable Laws” means all applicable laws, judgments, decrees, injunctions, writs, and orders of any court, arbitrator, or governmental agency or authority and all rules, regulations, orders, interpretations, licenses, and permits of any federal or state governmental body, instrumentality, agency, or authority. A requirement to comply with an Applicable Law shall not prevent the Authority from challenging or disputing, in good faith, the interpretation or applicability of any Applicable Law.

“Asset Management Plan” or “AMP” means the running inventory of the purchase price, depreciation status, and probable replacement cost, and long-term planned replacement schedule of the Project’s durable capital as set forth in Section 3.3.B.

“Authority” means the Southside Network Authority.

“Board” means the Board of Directors of the Southside Network Authority.

“Bonds” means revenue bonds issued by the Authority in accordance with the Act or other Applicable Laws.

“Capital Improvement Program” or “CIP” means the annually-adopted plan of capital improvements necessary to carry out the goals of the Asset Management Plan and the Strategic Plan as set out in Section 5.1. The CIP shall include estimates of costs of facilities and life-cycle

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costs and the means of financing them for the next ensuing five Fiscal Years as set forth in Section 3.3.A.

“Capital Reserve Fund” or “Sinking Fund” has the meaning given to it in Section 2.6.C.

“*Code of Virginia*” means the Code of Virginia, 1950, as amended, or successor provisions of law.

“Commonwealth” means the Commonwealth of Virginia.

“Consulting Engineer” means an engineer or firm of independent consulting engineers of recognized standing and experienced in the field of broadband and fiber optic engineering and registered to do business in the Commonwealth.

“Executive Director” means the chief administrative officer of the Authority, or, if none, the chair of the Board.

“Fiscal Year” means the period beginning on July 1 of one year, and ending on June 30 of the next.

“Initial Offering” has the meaning given to it in Section 2.3.

“In-Kind Contribution” means any real or personal property, including tangible or intangible property or transferrable permits or other rights, that the Board accepts in lieu of a cash payment for Shares under Section 2.3.B.

“Notes” means short-term obligations of the Authority, including notes issued in anticipation of the receipt of revenue, grants, or the proceeds of long-term Obligations.

“Obligations” means the Notes, Bonds, or other indebtedness of the Authority.

“Participating Member” or “Participant” means a member of the Authority that has purchased Shares in the Project under Section 2.3.

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“Project” means the Southside Regional Connectivity Ring as described in **Appendix A**, and as let in SNA-IFB-2021-01, as constructed in accordance with such contract, as amended, and financing, operations, maintenance, marketing, reconstruction, renovation, extensions, and management thereof.

“Project Committee” means the committee, established pursuant to Section 2.2, that exercises control over the Project as provided in this Agreement.

“Reserved Strand” has the meaning given to it in Section 4.4.

“Share” has the meaning given to it in Section 2.3.

“Soft Costs” means engineering costs, financing costs, and legal costs associated with a construction project.

“Staff” means the Executive Director and his or her appointees, as may be provided from time to time, or, where legally permitted, contractors, consultants, or other agents of the Authority.

ARTICLE II**Acquisition, Construction, and Financing**

Section 2.1. Construction of Regional Fiber Connectivity Ring. The Authority shall, either through its own forces or contractors, acquire, construct, equip, finance, operate, maintain, market, and manage the Project as provided in this Agreement.

Section 2.2. Project Committee. The Authority hereby creates a Project Committee. The Project Committee is hereby delegated the full power of the Board to (i) within funds duly available and budgeted by the Board, organize and manage the acquisition, construction, and equipping of the Project, including but not limited to issuing notice(s) to proceed and negotiating, approving, and disapproving payment applications and change orders, (ii) organize and manage the operation, maintenance, and marketing of the Project, including, within funds duly available and budgeted by the Board, entering such contracts as it deems advisable on behalf of the Authority to carry out

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these purposes, (iii) obtain all federal, state, and local permits for the Project, and (iv) enter agreements, including infeasible rights of use or other similar lease and use-sharing arrangements, for the use of the Project. The Project Committee may further delegate the administration of these matters to Staff.

The Board reserves to itself the functions of (a) setting the budget for the Project Fund, (b) approving the issuance of the Authority's Obligations and the terms thereof, (c) approving acquisition or disposition of interests in real estate, including municipal franchises or master lease agreements for the use of rights of way. However, in all such decisions, the Board shall consider the needs of the Project and give due weight to the recommendation, if any, of the Project Committee.

The Project Committee shall consist of one appointee from each Participating Member. Each Participating Member may appoint its own voting member of the Project Committee, who may be, but need not be, one of its appointees to the Board. The Project Committee may establish its own bylaws, which must be approved by the Board before going into effect. The Project Committee is authorized to appoint a chair, vice-chair, and secretary/treasurer, any of whom may be members of the Board or members of Staff but must be a Project Committee appointee. The Project Committee shall transmit its minutes to the Board regularly, but in any event within 10 days after the meeting for which such minutes are taken. In all matters and recommendations to the Board on which the Project Committee acts, the proportional weight of each Participating Member's vote shall be determined by the number of Shares it possesses.

Section 2.3. Shares.

A. The Board hereby authorizes an Initial Offering of 100 Shares in the Project, to be made on January 14, 2022, or a convenient date and time thereafter, as chosen by the

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Authority, but not more than three months from January 14, 2022. The Initial Offering contains only one class of Shares, and Shares may only be purchased by Member Jurisdictions. The par value of each Share shall be \$250,000.

B. In-Kind Contributions to be used by the Authority to complete the Project may, at the Board's discretion, be considered in lieu of cash contributions for the purchase of Shares in the Project. The cash value of this In-Kind Contributions shall be determined by a Consulting Engineer chosen by the Authority using a cost or cost-avoidance basis, in the sole discretion of the Consulting Engineer. The Consulting Engineer shall submit its valuation of the proposed In-Kind Contributions to the Board and the Member Jurisdiction for approval. The In-Kind Contribution shall not occur without the concurrence of both the Board and the Member Jurisdiction. In-Kind Contributions shall become the sole property of the Authority.

C. Each Member Jurisdiction shall be offered 20 Shares of the Initial Offering. Shares may be purchased at a par value of \$250,000 each, and the minimum buy-in at the initial offering is at least eight (8) Shares. If any Participating Member elects to purchase fewer than 20 Shares, the unpurchased Shares shall be offered at par to the remaining Participating Members within 30 days, who may each purchase an equal number of unpurchased Shares, with this process being repeated until all available Shares have been purchased or retained by the Authority. Within 30 days after purchase, each Participating Member shall either make payment for all Shares or appropriate such funds and enter a legally binding agreement with the Authority, acceptable in form and substance to the Authority, wherein the Authority shall draw down available funds as needed by the Authority until all (obligated or appropriated) funds are expended.

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D. The Board, upon recommendation of the Project Committee, may issue further Shares to finance further capital expenditures in support of the Project. The sale of such Shares shall be governed by the same method for the sale of Shares and unpurchased Shares utilized for the Initial Offering under this Article II.

E. The proportional weight of each Participating Member's vote on the Project Committee shall be determined by the number of Shares it possesses.

Section 2.4. Grants. The Authority shall actively seek grant opportunities in support of the goals of the Project. The Participating Members shall not unreasonably withhold or delay their support for any such grant. Unless the grant documents require or restrict use otherwise, grant funds shall be used for the following purposes, in order of priority: (i) to pay current costs of construction, if any; (ii) to defease for savings or redeem outstanding Obligations prorated based on initial debt allocations pursuant to Section 2.5; then (iii) into the Debt Service Reserve Fund, if any, until fully funded; and then (iv) deposited into the Capital Reserve Fund.

Section 2.5. Agreement to Finance.

A. General Provisions. The Authority may use a combination of cash and debt financing for the initial cost of acquiring, constructing, and equipping the Project and providing working capital for its initial operations by issuance of Shares pursuant to Section 2.3. The Board may, upon recommendation of the Project Committee, issue, from time to time, Obligations of the Authority to provide long-term or short-term financing of costs upon such terms as it may determine to be in the best interest of the Authority and in accordance with law. All debt service payment schedules will be provided to the Member Jurisdictions within 20 days after closing on an issuance of Obligations.

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B. Obligations to be Debts of Authority Only. All Obligations authorized to be entered by this Agreement or which the Board issues pursuant to this Agreement shall be the obligations of the Authority only, unless also entered by or guaranteed by one or more Participating Members under such terms and conditions as their governing body or bodies might agree.

Section 2.6. Cash Reserves. There are three types of cash reserves that may be established for the Project to assure financial health. Outlined below are the descriptions, means of funding, and general balances of each type. The order of precedence of funding, unless varied by applicable financing documents related to Obligations, is as follows:

A. Debt Service Reserve Fund—The lenders for the Obligations may require a Debt Service Reserve Fund, generally equal up to the maximum annual debt service payment (principal and interest) for each issuance of Obligations. If required, this amount should be established at the time of the issuance of the Obligations, in consultation with the Authority’s financial advisor. The budget shall be set such that there are sufficient revenues each year to pay the debt service for the Fiscal Year. If, however, the revenue is insufficient, then the difference may be withdrawn from the Debt Service Reserve Fund, which shall then be replenished in accordance with the provisions of the documents establishing the Obligations, if so provided, or as part of the annual budgeting process under Article III.

B. Operating Reserve Fund—As part of each Fiscal Year’s Annual Budget, the Operating Reserve Fund shall be adjusted to contain operating and maintenance expenses in an amount approximating the costs of operations for ninety (90) days, to provide cash flow during transitions, lag time between delivery of service and payment, or other

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operational shortfalls or unusual events. The ongoing Operating Reserve Fund shall also serve as a revenue stabilization fund during market changes during fiscal years.

C. Capital Reserve Fund (Sinking Fund)—A Capital Reserve Fund or Sinking Fund shall be established using the Asset Management Plan and the Capital Improvement Program to fund both capital replacements and future upgrades and expansions of the Project. The approved annual budget shall include funding for not less than 25% of the initial gross construction cost, exclusive of Soft Costs, of the Project based upon the AMP, which shall either be expended to fund future capital improvements in accordance with the CIP. The initial capitalization of the Capital Reserve Fund shall occur over a reasonable budgetary period, in the discretion of the Board, not to exceed seven years in length.

Section 2.7. Withdrawal; Transfer of Shares; Impact.

A. Withdrawal from Project. A Participating Member may withdraw, in whole or in part, from this Agreement if the following conditions are met:

1. Withdrawal is not prohibited by the terms of any applicable Obligations, nor will it materially impair any existing Obligations, in the reasonable opinion of a qualified independent municipal financial adviser, to be chosen by the Board; and

2. The Participating Member seeking to withdraw has disposed of some or all of its Shares to one or more other Participating Members. The Shares of the withdrawing Participating Member shall be offered to the other Participating Members in the same manner as Shares not purchased in the first round of the Initial Offering under Section 2.2.C.

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B. Impact of Withdrawal. Upon partial or complete withdrawal, the proportional voting as provided in Section 2.2 and all other matters to be allocated by Share ownership under this Agreement shall be reallocated based upon the new Share ownership.

ARTICLE III
Annual Budget & Fiscal Policies

Section 3.1. Project Fund to be Separate Fund. The Project Fund shall be treated as a fund and budgetary unit separate and apart from the general operating fund or any other project or dedicated fund of the Authority.

Section 3.2. Setting the Annual Budget. On or before each January 15 the Authority shall provide to each Participant the Authority's proposed Annual Budget for the next Fiscal Year. The Annual Budget shall consider all anticipating operating costs including, but not necessarily limited to, (i) all direct and indirect costs of operation and maintenance of the Project, (ii) any debt service cost of the Authority, (iii) all major capital expenditures anticipated during the five following Fiscal Years, including reasonable funding of replacements and any desired deposits to the Capital Reserve Fund, (iv) all revenues and fees to be paid by any person under long-term contracts, (v) all revenues and fees anticipated to be paid by any person under short-term contracts, and (vi) special categories of costs and revenues.

Section 3.3. Capital Management; Replacement Fund.

A. The Authority shall annually adopt, as part of its budget process, a Capital Improvement Program (CIP) for planning of capital improvements and replacements in the following five years. The CIP shall form the basis and provide guidance for the preparation and adoption of the annual capital budget of the Authority.

B. The Authority shall keep and maintain, as the basis for the CIP, an inventory of its durable and capital assets, together with an ongoing accounting of depreciation status

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and anticipated remaining useful life and anticipated replacement cost, to be called its Asset Management Plan (AMP). The depreciation status and probable replacement schedule shall be updated annually as part of the budget process; assets shall be timely added or removed from the AMP upon their acquisition, sale, or disposal.

C. The Authority shall budget for the Sinking Fund in each annual budget as provided in Section 2.6.C.

Section 3.4. Quarterly Reporting on Budget. Within 30 days after the end of each of the first three quarters of each fiscal year, the Authority will provide each Participating Member with a statement of revenues and expenditures of the Authority for the preceding quarter. The Authority will provide to each Participating Member on or before each August 1 an unaudited report showing the activities and revenues, expenditures, and accounts of the Project Fund, for the preceding Fiscal Year.

Section 3.5. Forecasting. To assist the Participating Members in estimating their obligations to or revenues from the Project, the Authority shall develop a policy, which may be amended from time to time, for forecasting its revenues and expenditures over future periods of up to five years beyond the then-current Fiscal Year. The forecast shall be routinely monitored and revised as necessary. The forecast will be distributed annually to Participating Members during the budgetary process for review and consideration prior to Board approval.

Section 3.6. Books & Accounts. The Board shall adopt a system of accounts compliant with the standards of the Governmental Accounting Standards Board (GASB) and Applicable Laws, and shall keep an accounting of all property of the Authority and (i) its initial gross purchase price and (ii) its depreciation using uniform, accepted depreciation schedules, as part of the AMP established pursuant to Section 3.3.B.

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Section 3.7. Fiscal Agent. The Authority may contract with any Member Jurisdiction or regional organization or qualified entity to act as its fiscal agent upon such terms and conditions as the Board and the fiscal agent may agree.

Section 3.8. Liability & Insurance. The Authority shall procure and contract for insurance or a lawful policy of self-insurance in its own name or a combination of both insurance and self-insurance to protect itself against liability, damages, and other matters subject to insurance as determined by the Board.

Section 3.9. Procurement. No funds shall be spent or expended without a purchase order or contract requiring payment of such funds, or, in the case of a donation of property, or goods and services, a deed or written receipt accepting the donation. Contracts with non-governmental entities shall be governed by the Virginia Public Procurement Act, *Code of Virginia*, Chapters 43 and 43.1 of Title 2.2, or the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), *Code of Virginia*, Chapter 22.1 of Title 56, as the Project Committee deems appropriate.

Section 3.10. Audits. The Authority shall obtain an annual financial audit of its accounts, or may contract with any Member Jurisdiction or regional organization or to cooperatively or jointly contract for an annual financial audit to be completed by a certified public accountant or accounting firm licensed to practice in the Commonwealth of Virginia by December 31 of each year. The audit shall be conducted according to generally accepted auditing and accounting standards or according to the audit specifications and audit program prescribed by the Auditor of Public Accounts. The annual audit shall be transmitted to the chief administrative officer of each Participating Member promptly upon delivery to the Board.

ARTICLE IV
Revenues and Distributions

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Section 4.1. Fees for Dark Fiber. The Project Committee shall actively market dark fiber other than Reserved Strands and may enter contracts and agreements for the same upon such terms and conditions as it may approve. The Board shall set guidelines for standard rates for dark fiber, but the Project Committee may deviate from such guidelines for sound business or planning, community development, or economic development reasons, including but not limited to, (i) a request from a Participating Member for preferential treatment for an economic development prospect, (ii) service to neighborhoods, developments, or persons that are unserved, underserved, or served only with uneconomical internet, or (iii) bulk purchase (e.g., lease to a large institutional user).

Section 4.2. Fees and Charges for Lit Fiber. The Project Committee may offer lit fiber services to the public upon approval of the Board, in accordance with the Act, and pursuant to this Section.

A. In the event the Authority offers lit services through its own forces or contractors, the rates, fees, and charges at which the Authority's lit fiber services are offered to the public shall be set in accordance with *Code of Virginia*, Section 15.2-5431.25. Rates, fees, and charges shall be set by the Board upon recommendation of the Project Committee.

B. In conjunction with offering lit services through the Project, including in conjunction with a lease of dark fiber, the Authority may enter a public-private partnership, in accordance with Applicable Laws, under such terms and conditions as the Board shall determine are in the best interest of the Authority and the goals in the Strategic Plan. The rates, fees, and charges shall be set in accordance with the provisions of any public-private partnership governing documents.

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Section 4.3. Contributions & Distributions. Participating Members shall pay rates, fees, and charges, or receive distributions of net revenues, as follows:

A. If, during the budgeting process, the anticipated budget for the next following Fiscal Year indicates a deficit, after funding for all reserves, the Participating Members shall pay to the Authority, paid on a quarterly basis in arrears, rates, fees, and charges proportional to their ownership of Shares. The rates, fees, and charges shall be increased or decreased and reported to the Participating Members quarterly and shall be updated based upon actual costs and payments and as approved by the Board. These rates, fees, and charges are in the nature of a fee for the continuing provision and availability of a service, not a debt, and shall not be construed to be a general obligation within the meaning of the Virginia Constitution, Art. VII § 10.

B. If, during the budgeting process, the anticipated budget for the next following Fiscal Year indicates a surplus, after funding for all reserves, the Authority shall distribute, on a quarterly basis, net revenues to the Participating Members proportional to their ownership of Shares pursuant to Sections 2.2 and 2.3. The distributions shall be updated and reported to the Participating Members quarterly and may be updated based upon actual costs and payments.

Section 4.4. Reserved Strands. Participating Members shall be entitled to use up to six strand pairs of dark fiber (the “Reserved Strands”) for their own internal use without payment of any rate, fee, or charge, except those fees set under Section 4.3.A. The number of strands reserved at different levels of purchase of Shares are:

8 to 14 2 strands (1 pair)

14 to 20 4 strands (2 pairs)

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20+ 6 strands (3 pairs)

The Participating Members agree that none will sell, lease, or otherwise offer access to Reserved Strands to third parties commercially at rates below those charged by the Authority for like access.

Section 4.5. Penalties. If any Participating Member fails to pay any sum due under this Article within 10 days after its due date, the sum due and payable shall bear interest at the rate set forth in *Code of Virginia*, Section 2.2-4355; provided, however, that this provision shall not apply in instances where Applicable Laws or the provisions of the documents establishing outstanding Obligations prescribe some other due date or late payment charge.

ARTICLE V
Operations and Maintenance

Section 5.1. Strategic Planning. The Project Committee shall develop and submit to the Board, not more than 12 months after the date of this Agreement, a Strategic Plan for achievement of its goals and for future expansion of the Project. In development of the Strategic Plan, the Project Committee shall consider, without limitation: The economic needs of the region; marketplace demand for its services; the provisions of the Comprehensive Plans and strategic plans of the Participating Members and other jurisdictions in which portions of the Project or its customers might exist or operate; and such other matters as may be relevant to its operations. Considerations in the development of the Strategic Plan shall include those matters designated in **Appendix B**.

Section 5.2. Operating the Regional Connectivity Ring. During the period of acquisition, construction, and immediate post-construction maintenance of the Project, the Project Committee shall procure the services of one or more qualified contractors to inspect, operate, maintain, and market the Project in accordance with this Agreement. These contractors may be procured as part of a public-private partnership arrangement. If, in the opinion of the Project Committee, adequate contractors cannot be obtained, the Board may authorize the Project Committee to carry out some

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or all these functions with the Authority's own forces. The Project Committee shall ensure that the Project is operated in an efficient and economical manner, considering advances in technology and changes in the needs of the Participating Members and the public, making all necessary and appropriate repairs, replacements, and renewals, consistent with good business and operating practices, in accordance with applicable standards of local, state, and federal law, and in accordance with the provisions of the Strategic Plan and this Agreement.

ARTICLE VI
Defaults and Remedies

Section 6.1. Default by the Authority. The following events are "Events of Default" by the Authority:

- A. Failure of the Authority to pay principal and interest on any Obligations issued for the Project or obtained by the Authority pursuant to this Agreement when due;
- B. If the Authority is for any reason rendered incapable of performing any of its material obligations under this Agreement;
- C. The Authority makes an assignment of all or a substantial portion of its Obligations under this Agreement without the prior consent of all the Participating Members;
- D. The Authority defaults on any of its material obligations under any agreement pursuant to which any Obligation issued for the Project is obtained by the Authority pursuant to this Agreement and such default is not cured within any applicable cure period;
- E. Any proceeding is instituted, with the consent or acquiescence of the Authority, for the purpose of effecting a composition between the Authority and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any state

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or federal statute now or hereafter in effect, if the claims of such creditors are under any circumstances payable from the funds of the Authority; or

F. The Authority defaults in the due and punctual performance of any other of the covenants, conditions, agreements, and provisions contained in this Agreement.

Section 6.2. Default by Participating Members. The occurrence of any one or more of the following events shall constitute an “Event of Default” by any Participating Member:

A. Failure of any Participating Member to make any payment to the Authority when due and outside any applicable grace period;

B. Any Participating Member becomes unable to fulfil its material obligations under this Agreement;

C. Any proceeding is instituted, with the consent or acquiescence of any Participating Member, for the purpose of effecting a composition between such Participating Member and its creditors for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter in effect, if the claims of such creditors are under any circumstances payable from the general funds of such Participating Member; or

D. Any Participating Member defaults in the due and punctual performance of any other of the covenants, conditions, agreements, and provisions contained in this Agreement.

Section 6.3. Remedies of Participating Members. Upon the occurrence of an Event of Default by the Authority and the default continues for thirty (30) days after written notice specifying the default and requiring it to be remedied has been given to the Authority by any Participating Member, any Participating Member, after giving notice of such Event of Default to

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all parties, may bring suit by mandamus or other appropriate proceeding to require the Authority to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 6.4. Remedies of Authority. Upon the occurrence of an Event of Default by a Participating Member and the default continues for thirty (30) days after written notice specifying the default and requiring it to be remedied has been given to such Participating Member by the Authority or other Participating Member, the Authority, after giving notice of such Event of Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Participating Member to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 6.5. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the parties is intended to be exclusive of any other remedy, and each remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing.

Article VII
Additional Agreements

Section 7.1. Further Documents and Data. The parties to this Agreement will execute and deliver such further documents and perform all other acts that are reasonably necessary to perform the obligations and consummate the transactions contemplated by this Agreement.

Section 7.2. Notification. The Authority will promptly furnish to each Participating Member a copy of any notice or order of any governmental authority asserting that the Project is not in compliance in any material respect with any Applicable Law.

Section 7.3. Tax-Exemption Covenant; Continuing Disclosure.

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A. The Authority may issue Obligations in a manner such that the interest thereon is excludable from gross income for income tax purposes under Applicable Laws. The Authority and each Participating Member agree that after an Obligation is issued they will not knowingly take any action or omit to take any action that would intentionally adversely affect such exclusion.

B. Pursuant to Section 15c2-12(b) of regulations issued by the U.S. Securities and Exchange Commission, the Authority and the Member Jurisdictions may be required to agree with the owners of Obligations, for as long as such Obligations are outstanding, to supply certain national municipal securities information repositories (i) annually, certain financial and operating information, and (ii) periodically, notification of certain specified material events affecting the Authority, the Participating Members, and such Obligations. The particulars of this ongoing disclosure requirement will be set forth in one or more of an indenture, loan agreement, or continuing disclosure agreement. Each Participating Member agrees to cooperate with the Authority in fulfilling this requirement, including providing the Authority with timely notice of the occurrence of any of the specified events that are material to its operations and hereby authorizes the Authority's Executive Director to execute and deliver any agreement considered necessary or appropriate to evidence such Participating Member's continuing disclosure undertaking.

Article VIII
Covenants & Guaranties

Section 8.1. Covenants of the Authority. The Authority represents, warrants, and covenants as follows:

A. Organization, Authorization and Validity. The Authority is a body corporate and politic and a political subdivision of the Commonwealth duly organized and

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validly existing under the laws of the Commonwealth and has duly authorized, executed, and delivered this Agreement.

B. Authority. The Authority has all requisite authority under the Act to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract, or other agreement or arrangement the performance of which by the Authority would prevent or materially and adversely affect the Authority's ability to perform the terms of this Agreement.

C. Non-Contravention. The execution and delivery of this Agreement by the Authority and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of the Act, the bylaws of the Authority or any material indenture, contract, or other agreement or arrangement to which the Authority is a party or by which any of its properties are bound, or any Applicable Law by which the Authority is bound.

D. Litigation. The Authority is not a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of the Authority's knowledge, threatened, which would materially adversely affect the Authority's ability to perform its obligations under this Agreement.

Section 8.2. Covenants of Participating Members. The Participating Members represent, warrant, and covenant as follows:

A. Organization, Authorization, and Validity. Each Participating Member is a political subdivision of the Commonwealth duly organized and validly existing under the laws of the Commonwealth, and each has duly authorized, executed, and delivered this Agreement.

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B. Authority. Each Participating Member has all requisite authority to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract, or other agreement or arrangement, the performance of which by it would prevent or materially and adversely affect its individual performance under this Agreement.

C. Non-Contravention. The execution and delivery of this Agreement by each Participating Member and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions, or provisions of any charter, resolution, or ordinance, any material indenture, contract, or agreement or arrangement to which it is a party or by which any of its properties are bound, or any Applicable Law by which it is bound.

D. Litigation. No Participating Member is a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of its knowledge, threatened, which would materially and adversely affect its ability to perform under this Agreement.

Article IX
Miscellaneous Clauses

Section 9.1. Severability of Invalid Provisions. If any clause, provision, or section of this Agreement is held to be illegal or invalid by any court, administrative agency, or other governmental authority, the invalidity of the clause, provision, or section will not affect any of the remaining clauses, provisions, or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section has not been contained in it.

Section 9.2. Notices. Any notice or other communication under or in connection with this Agreement shall be in writing to the below persons and addresses, or to such other persons

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and addresses as any Participating Member may from time to time specify in writing. A notice shall be construed to be delivered upon the earliest of (i) execution of a registered mail return receipt by the addressee, (ii) refusal of the mail by the addressee, or (iii) seven days from the notice being deposited in the U.S. Mail, first-class postage prepaid by registered mail, return receipt requested.

Notice to:

With a copy to:

For the Authority:

Southside Network Authority
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320
Attn: Executive Director

Guynn, Waddell, Carroll & Lockaby, P.C.
415 South College Avenue
Salem, Virginia 24153
Attn: Authority Counsel

For the City of Chesapeake:

City Manager
Chesapeake City Hall
306 Cedar Road
Chesapeake, Virginia 23322

City Attorney
Chesapeake City Hall
306 Cedar Road
Chesapeake, Virginia 23322

For the City of Norfolk:

City Manager
Norfolk City Hall
810 Union Street
Norfolk, Virginia 23510

City Attorney
Norfolk City Hall
810 Union Street
Norfolk, Virginia 23510

For the City of Portsmouth:

City Manager
Portsmouth City Hall
801 Crawford Street
Portsmouth, Virginia 23704

City Attorney
Portsmouth City Hall
801 Crawford Street
Portsmouth, Virginia 23704

For the City of Suffolk:

City Manager
Suffolk City Hall

City Attorney
Suffolk City Hall

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442 W. Washington Street
Suffolk, Virginia 23434

442 W. Washington Street
Suffolk, Virginia 23434

For the City of Virginia Beach:

City Manager
City Hall
2401 Courthouse Drive
Virginia Beach, Virginia 23456

City Attorney
City Hall
2401 Courthouse Drive
Virginia Beach, Virginia 23456

Section 9.3. Execution of Agreement. A sufficient number of copies for each party approving this Agreement, each of which shall be deemed to be an original having identical legal effect, shall be executed by the parties.

Section 9.4. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth. Venue for any dispute hereunder shall be in the state and federal courts for the City of Chesapeake, Virginia, or the locality of any future location of the Authority's corporate office.

Section 9.5. Amendments. This Agreement may be changed or amended only with the consent of the Authority and each Participating Member. No such change or amendment may be made which will affect adversely the prompt payment when due of all moneys required to be paid by the Participating Members under the terms of this Agreement, and no such change or amendment shall be effective which would cause a violation of any provision of any resolution, indenture, or agreement pursuant to which any Obligation has been issued or obtained by the Authority for the Project.

Section 9.6. Waiver. Sufferance of violation of any term of this Agreement, no matter how long continued, shall not operate as a waiver of that term in any future situation. Any waiver by any party of its rights under this Agreement must be in writing, and will not be deemed a waiver with respect to any matter not specifically covered. Nothing in this Agreement authorizes the

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waiver of any Participating Member's obligation to make payments when due of all moneys required to be paid by the Participating Member under the terms of this Agreement.

IN WITNESS WHEREOF, see the following signatures:

Signatures on following pages...

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

EXHIBIT A

*Southside Regional Connectivity Ring
Project Participation Agreement*

Southside Network Authority:

By: _____

Name: _____

Its: _____

Date: _____

A teste:

 Secretary, Board of Directors

Signatures continue on next page...

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

EXHIBIT A

*Southside Regional Connectivity Ring
Project Participation Agreement*

City of Chesapeake, Virginia:

By: _____

Name: _____

Its: _____

Date: _____

A teste:

 Clerk, City Council

Signatures continue on next page...

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

EXHIBIT A

*Southside Regional Connectivity Ring
Project Participation Agreement*

City of Norfolk, Virginia:

By: _____

Name: _____

Its: _____

Date: _____

A teste:

 Clerk, City Council

Signatures continue on next page...

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

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*Southside Regional Connectivity Ring
Project Participation Agreement*

City of Portsmouth, Virginia:

By: _____

Name: _____

Its: _____

Date: _____

A teste:

 Clerk, City Council

Signatures continue on next page...

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

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*Southside Regional Connectivity Ring
Project Participation Agreement*

City of Suffolk, Virginia:

By: _____

Name: _____

Its: _____

Date: _____

A teste:

 Clerk, City Council

Signatures continue on next page...

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

EXHIBIT A

*Southside Regional Connectivity Ring
Project Participation Agreement*

City of Virginia Beach, Virginia:

By: _____

Name: _____

Its: _____

Date: _____

A teste:

Clerk, City Council

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

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Appendix A

[To be supplied by A/E]

Attachment: Ordinance Exhibit A (Resolution No. 1849 : Southside Network Authority Project Participation Agreement)

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Appendix B

- Reliable and secure backhaul communications connectivity to support the needs of public safety entities and national security institutions.
- Availability of dark fiber for internal governmental needs of the Participating Members.
- Provide bandwidth to support growing educational needs (e.g., virtual classrooms).
- Provide affordable access to underserved and unserved citizens to address the residential Digital Divide. (Affordability/availability of service to low- and moderate-income households and households with poor credit.)
- Attract new enterprises with high-paying jobs to the region (i.e., Biomed, cyber security, corporate headquarters, and financial services), and in particular the Participating Members.
- Enable strategic partnerships between commercial providers leveraging subsea cables and data centers and anchor institutions such as colleges, universities, hospitals, the Commonwealth of Virginia, and the armed forces.
- Expedited service availability or arrangements to benefit economic development prospects or other community development needs.
- Provide competitive and non-discriminatory access to middle-mile fiber to promote investment by commercial providers in innovative and competitively priced last-mile broadband services – the Project is not to be used exclusively for the Authority and its members, rather it must be available to facilitate competitive delivery of broadband services on an open access basis.
- Expand accessibility to subsea cables and related localized commercial data center infrastructure.
- Support broadband needs of business incubators, technology innovators, product accelerators, and data centers.
- Foster an ecosystem for low-cost internet service providers to meet demand for affordable internet to address the business Digital Divide.
- Expand advanced technology business creation and retain newly educated/skilled workforce.
- Such other and further matters as may be reasonably related to the Project.